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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/829,894 | 04/10/2001 | Robert Barritz | P/1318-127 | 8555 |

2352 7590 08/10/2005

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

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| EXAMINER |
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RHODE JR, ROBERT E

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| ART UNIT | PAPER NUMBER |
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3625

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,894

Applicant(s)

BARRITZ, ROBERT

Examiner

Rob Rhode

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 10 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant amendment of 5-23-0 traversed rejections of Claims 1 - 13.

Currently, claims 1- 13 are pending.

Drawings

The drawings filed on 04/10/2001 as indicated in a previous rejection are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 1, the word "criteria" is a relative word, which renders the claims indefinite. The word " criteria" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree other than providing some examples, and one of ordinary skill in the art would not be reasonably appraised

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of the scope of the invention. Moreover, the word "criteria" as recited is so broad that establishing the metes and bounds of the claim are almost impossible. For examination purposes the word "criteria" will be defined as a user employing a standard on which a judgment or decision is based. For example, a shoe store owner is not going to seek out products on fire hoses too. Rather, they will base their requirements on the business needs such as shoes or related merchandise, which will be the standard upon which their decision will be made. As another example, they will not search for and download information on products, which do not related to the business.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the word(s) "semi-automatically " and "substantially automatically" are a relative word/phrase(s), which renders the claims indefinite. The word " semi-automatically " and "substantially automatically" are not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "semi - automatically" and "substantially automatically" will be treated as a search criteria being entered each time for each separate item/merchandise by an individual. Thereby, these steps are completed in a "semi-automatic" as well as "substantially automatically" fashion as result of each search criteria being entered manually and the results of the search for these products are downloaded/presented.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 1, the word "subsystem" is a relative word, which renders the claims indefinite. The word " subsystem" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree other than providing some examples, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. Moreover, the word "subsystem" as recited is so broad that establishing the metes and bounds of the claim are almost impossible. While the applicant uses the word "subsystem", a subsystem can and often is implemented in separate software modules, which are considered separate subsystems. Furthermore, the applicant in the submitted drawings has not depicted the interaction of these "subsystems" nor detailed them in any manner in the written specification. For examination purposes, the word "subsystem" will be treated as a software tool with associated software modules/subsystems, which provides the capability to search for specified items/merchandise, extract from other catalogs and bring back (i.e. download) the item/merchandise - from a plurality of vendors/suppliers catalogs.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernardo (US 6,684,369 B1) in view of “Build the e-commerce catalog”; Saroja Girishankar; Information Week; Nov. 29, 1999 and hereafter referred to as “Catalog”.

Regarding claim 1 (currently amended), Bernardo teaches a website constructor, comprising:

a website organization subsystem that defines a look and feel of the website constructed by the website constructor (see at least Abstract);
a graphic design subsystem that creates at least one website layout and features setup for the website constructed by the website constructor (see at least Figures 4 - 12); and
a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing subsystems (see at least Col 3, lines 34 – 38 and Figure 30).

While it is implicit in Bernardo that a merchant would establish a criteria for selecting merchandise such as selecting shoe related items for a shoe store and not fire hoses too, the reference does not specifically disclose or teach a selection criteria subsystem

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that establishes a selection criteria for merchandise selection, a merchandise selection subsystem in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection subsystem.

On the other hand, Catalog teaches a website constructor comprising a selection criteria subsystem that establishes a selection criteria for merchandise selection (see at least Page 1 and 2),

a merchandise selection subsystem in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors (see at least Pages 1 - 3);

a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website

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constructor that has been selected by the merchandise selection subsystem (see at least Pages 1 - 4).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have provided the constructor of Bernardo with the constructor of Catalog to have enabled a constructor comprising a selection criteria subsystem that establishes a selection criteria for merchandise selection, a website organization subsystem that defines a look and feel of the website constructed by the website constructor; a graphic design subsystem that creates at least one website layout and features setup for the website constructed by the website constructor ; a merchandise selection subsystem in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection subsystem and a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing subsystems – in order to enable a business to establish and conduct business at virtual site on the internet. Bernardo discloses a constructor for that defines look and feel and graphic design subsystem for website layout (Abstract). In turn, Catalog discloses a constructor

with a selection criteria subsystem that establishes a selection criteria for merchandise selection, a merchandise selection subsystem in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection subsystem (see at least Pages 1 - 3). Therefore, one of ordinary skill in the art at the time of the applicant's invention would have been motivated to extend the constructor of Bernardo with a constructor comprising a selection criteria subsystem that establishes a selection criteria for merchandise selection, a merchandise selection subsystem in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection subsystem. In this manner, the investment required by the website owner can be reduced as well the

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time to establish the website, which will enabled a more rapid ability to obtain sales on the web and thereby begin recouping the investment.

Regarding claims 2 and 3, Catalog teaches wherein the system is operable semi-automatically (Pages 1, 2 and 3) and in which the website is optimized for a retail operation (Page 1).

Regarding claim 4, Catalog teaches the website constructor, in which merchandise information comprises at least two of the following merchandise parameters that are selected from the group consisting of: product code, UPC code, SKU code, product description, retail price, product style, product color, product size, product ordering information, product incentive program, product image, and product tags (Pages 1, 2 and 4).

Regarding claim 5, Catalog teaches a website constructor, in which the merchandise information is provided in Extensible Markup Languages (XML) [Page 3].

Regarding claim 6, Catalog teaches in which the selection criteria comprises at least two parameters selected from the parameter group consisting of: category; subcategory; manufacturer; vendor; promotions; closeout; starting date and ending date of seasonal merchandise (Page 1).

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Regarding claim 7, Bernardo teaches a website constructor, in which the website organization subsystem defines the look and feel of the website by reference to one or more organization parameters selected from the parameter group consisting of: category; manufacturer; promotions; close-out; product appearance; and tags representing the begin and end dates for the placement of merchandise on the website ((Abstract).

Regarding claim 8, Catalog teaches in which the merchandise selection subsystem enables a user of the website constructor to control downloading of merchandise information in a manner which enables: acceptance or rejection of marketing or merchandise information based on the selection criteria; selection of purchase orders, pricing schedules, and delivery schedules; and specification of loading information (Pages 1 and 4).

Regarding claim 9, Bernardo teaches a website constructor in which the website builder enables periodical rebuilding of the website (Figure 30).

Regarding claim 10, Bernardo teaches a website constructor, which a website builder enables rebuilding of the website based on the detection of changed condition (Figure 30).

Regarding claim 11, the recitation that "in which the changed condition comprises a changed date", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "condition" already disclosed by Bernardo.

Regarding claims 12 and 13, the recitations that "in which the changed condition comprises the changing of the merchandise information by a vendor" and "in which the changed condition constitutes a manual intervention by a user of the website, such recitations are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "condition" already disclosed by Bernardo.

Response to Arguments

Applicant's arguments, filed 5-23-05, with respect to the rejection(s) of claim(s) 1 - 13 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bernardo and Catalog.

Applicant argues that the 35 USC 112, second paragraph regarding "criteria" and "semi-automatically" as well as "substantially automatically" are not indefinite.

The applicant's arguments regarding numerous Patent claims containing the words/phrases semi-automatically" as well as "substantially automatically is not

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persuasive. Quantity of patents is not considered to be precedential. In addition and in line with the Applicant's admission, these searches for merchandise/items results from "minimum manual input from a user", which are based on a business decision criteria such as shoes.

With respect to the word "criteria", the criterion has to be entered by an individual, who has some criteria in mind. For example, an individual would not have any "criteria", especially a businessperson when searching for merchandise. They have business requirements to satisfy and thereby would have criteria in mind such as types of shoes or associated products to search for and download the appropriate product information, which satisfy a business criteria that they entered. Thereby, they would have "criteria" associated with a business need and their decision is based on these business requirements such as shoes.

Conclusion

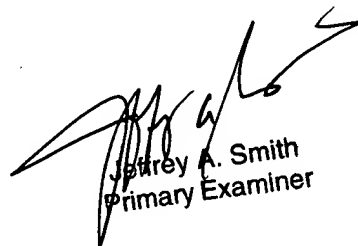
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number is 571.272.6761. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571.272.7159 and Official Fax number is 571.273.8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RER



Jeffrey A. Smith
Primary Examiner